

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : DATE FILED:_____

v. : CRIMINAL NO. 03-

AUGUSTINE HENRY : VIOLATIONS: 18 U.S.C. § 1001
(Falsifying material facts in a
matter before the Department of
Transportation - 10 Counts)

INDICTMENT

COUNTS ONE THROUGH TEN

THE GRAND JURY CHARGES THAT:

At all times relevant to this indictment:

1. On almost a daily basis during the months of July through October 1999, and December 2001 through August 2002, in the Eastern District of Pennsylvania and elsewhere, defendant AUGUSTINE HENRY knowingly falsified his commercial truck driver's daily logs, and exceeded the maximum lawful number of daily driving hours and "on-duty" hours without taking the required hours off-duty, which resulted in defendant driving in a tired and fatigued condition.

THE DEFENDANT

2. Defendant AUGUSTINE HENRY was a commercial motor vehicle truck driver, and possessed a Commercial Driver's License which authorized him to drive a truck intrastate and interstate on the public highways.

3. As a licensed commercial motor vehicle truck driver, defendant AUGUSTINE HENRY was required to comply with all laws and regulations governing driving on the nation's public roads.

4. From 1996 through October 1999, defendant AUGUSTINE HENRY was employed as a commercial truck driver for a trucking company called Dave Kistler and Grandson, Inc., located at 9128 King's Highway, Kempton, Pennsylvania. In late 2001, Dave Kistler and Grandson, Inc., terminated its business, having been convicted in federal court of defrauding and conspiring to defraud the United States by making false statements to the United States Department of Transportation, in violation of federal law. The business later reopened under the name of Ontelaunee Transport Services, Inc., and was located at the same address. From December 2001 through August 2002, defendant AUGUSTINE HENRY worked as a truck driver for Ontelaunee Transport Services, Inc.

**FEDERAL HIGHWAY SAFETY REGULATION OF
COMMERCIAL MOTOR VEHICLE OPERATORS**

5. The Federal Motor Carrier Safety Administration ("FMCSA"), a division of the United States Department of Transportation ("USDOT"), is an agency of the United States.

6. The FMCSA is responsible for, among other things, the regulation of commercial motor vehicle ("CMV") drivers (hereafter also referred to as "truck drivers"), including limitations on the maximum number of daily allowable driving hours and required hours off-duty, in order to protect the public from commercial trucking-related accidents caused by fatigued truck drivers operating on the nation's highways.

7. The FMCSA administers and enforces the Motor Carrier Safety Act of 1984, including the regulations issued under that Act. This Act and its regulations are written to ensure, among other things, that truck drivers fully comply with the responsibilities imposed on them to drive their vehicles in a safe and unimpaired manner, and that the physical condition of the drivers is adequate to enable them to operate their vehicles safely.

8. Among the federal regulations for CMV truck drivers relating to the safe operation of their vehicles are the following:

- a) limiting the maximum daily allowable driving hours which truck drivers may drive. These regulations include two general rules for the maximum allowable number of daily driving hours. The “10 hour rule” provides that once a CMV truck driver accumulates 10 hours of driving time, that driver may not drive again until he or she has at least 8 consecutive hours off-duty. The “15 hour rule” provides that when a CMV truck driver has been "on-duty" for 15 hours, whether driving or not, that driver may not drive again until he or she has had 8 consecutive hours off-duty;
- b) requiring a truck driver to maintain truthful and accurate driver daily logs which reflect the driver’s duty status, locations, and the daily number of hours spent driving, on-duty but not driving, in sleeper berth and off-duty; and
- c) requiring a truck driver to comply with all laws, ordinances and regulations in the jurisdiction in which the truck is being operated.

9. To ensure that motor carriers and truck drivers comply with the maximum hours of service limitations, truck drivers are required by federal regulation to record all daily activities, including driving time, on a form called "Record of Duty Status." This form is commonly referred to as a "Driver's Daily Log."

10. Federal regulations mandate that truck drivers certify the truthfulness and accuracy of the driver's daily logs by signing their name to each log.

11. Federal regulations further require that commercial motor carriers maintain their employees' driver's daily logs and supporting documents for those logs for at least six months.

12. The primary means by which FMCSA inspectors enforce the federal highway safety regulations relating to the limits on truck drivers' hours of service is to inspect the driver's daily logs to determine the number of driving hours, on-duty hours and off-duty hours and compare those logs with the supporting documents maintained by the motor carrier.

13. Defendant AUGUSTINE HENRY was required by law to keep the original driver's daily log book in his possession in the particular truck he was operating, and to maintain truthful, accurate and complete records of his driving status in his driver's daily logs.

DEFENDANT'S SCHEME

14. It was part of defendant AUGUSTINE HENRY's scheme to falsify, conceal and cover up a material fact in a matter within the jurisdiction of the USDOT to prepare and maintain false and fraudulent driver's daily logs which stated that he was driving in compliance with federal highway safety regulations, including limits on the maximum number of driving hours and "on-duty" hours, when in fact, as he well knew, he was exceeding the maximum

number of driving hours and "on-duty" hours without the required 8 consecutive hours off-duty, and was otherwise driving in violation of federal law.

15. From in or about July 1999 through in or about August 2002, defendant AUGUSTINE HENRY knowingly exceeded the maximum number of driving hours and "on-duty" hours without taking the required hours off-duty, and falsified his driver's daily logs.

16. On or about the dates listed below, in the Eastern District of Pennsylvania and elsewhere, defendant

AUGUSTINE HENRY,

in a matter within the jurisdiction of the executive branch of the United States government, namely the Federal Motor Carrier Safety Administration and the Department of Transportation, an agency of the United States, knowingly and willfully falsified, concealed, and covered up by trick, scheme and device, certain material facts, that is, defendant **AUGUSTINE HENRY** prepared and maintained for inspection by the FMCSA false and fictitious driver's daily logs which the defendant knew to be false and fictitious, in that, on or about each of the following dates during July 1999 through July 2002, he made the following false entries in his driver's daily logbook:

<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION OF FALSE STATEMENT</u>
<u>1</u>	7/11/99	Defendant falsely stated in his driver logbook for 7/11/99 that he was in the sleeper berth of his truck in Stamford, CT between 9:30 p.m. and midnight, when in fact he was driving in Emlenton, PA at 10:42 p.m. on that date.
<u>2</u>	7/20/99	Defendant falsely stated in his driver logbook for 7/20/99 that he was in the sleeper berth of his truck in Woodstown, NJ between 2:30 p.m. and midnight, when in fact he was driving in Elkton, MD, at 4:37 p.m. on that date.

<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION OF FALSE STATEMENT</u>
<u>3</u>	7/22/99	Defendant falsely stated in his driver logbook for 7/22/99 that he was off-duty in Kempton, PA the entire day, when in fact he was driving in Baltimore, MD at 10:28 a.m. and in Ephrata, PA at 12:30 p.m. on that date.
<u>4</u>	8/11/99	Defendant falsely stated in his driver logbook for 8/11/99 that he was in the sleeper berth of his truck in Potterstown, NJ between 2:45 p.m. and 10:45 p.m., when in fact he was driving in New Smithville, PA, at 3:27 p.m. on that date.
<u>5</u>	9/10/99	Defendant falsely stated in his driver logbook for 9/10/99 that he was off-duty in Kempton, PA the entire day, when in fact he was driving in Milford, CT at 8:26 p.m. on that date.
<u>6</u>	12/8/01	Defendant falsely stated in his driver logbook for 12/8/01 that he was in the sleeper berth of his truck in Jessup, MD between 6:15 p.m. and midnight, when in fact he was driving in Bloomsbury, NJ, at 6:46 p.m. on that date.
<u>7</u>	12/20/01	Defendant falsely stated in his driver logbook for 12/20/01 that he was off-duty in Tarrytown, NY between 5:45 a.m. and midnight, when in fact he was driving in Ruther Glen, VA at 9:12 p.m. on that date.
<u>8</u>	1/25/02	Defendant falsely stated in his driver logbook for 1/25/02 that he was in the sleeper berth of his truck in Waterford, CT between midnight and 4:15 a.m. when in fact he was driving in Bloomsbury, NJ, at 12:34 a.m. on that date.
<u>9</u>	2/7/02	Defendant falsely stated in his driver logbook for 2/7/02 that he was in the sleeper berth of his truck in Stamford, CT between 3:00 p.m. and 11:00 p.m. when in fact he was driving in Bloomsbury, NJ, at 6:16 p.m. on that date.

<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION OF FALSE STATEMENT</u>
<u>10</u>	7/16/02	Defendant falsely stated in his driver logbook for 7/16/02 that he was in the sleeper berth of his truck in Tarrytown, NY between 4:00 a.m. and 12:45 p.m., when in fact he was driving in Bartonsville, PA, at 11:42 a.m. on that date.

All in violation of Title 18, United States Code, Section 1001.

A TRUE BILL:

FOREPERSON

PATRICK L. MEEHAN
United States Attorney